

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

RSN & ASSOCIATES, INC.

and

Cases

20-CA-35612

20-CA-62395

20-CA-65564

20-CA-68636

UNITE HERE LOCAL 49,
UNITE HERE!, AFL-CIO

COUNSEL FOR THE ACTING GENERAL COUNSEL'S
BRIEF IN SUPPORT OF LIMITED EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

I. INTRODUCTION

On April 23, 2012, Administrative Law Judge John J. McCarrick (“the Judge”) properly decided that RSN & Associates (“Respondent”) violated Sections 8(a)(1) and 8(a)(5) of the Act when it unilaterally and without notice to or bargaining with UNITE HERE Local 49 (“Union”) ceased to remit payments to the Sacramento Independent Hotel, Restaurant, and Tavern Employees Pension and Welfare Plans; informed the Welfare Plan and Pension Plan that Respondent would no longer make contributions to the plans; laid off employee Ronald Arterburn out of seniority order; ceased its operations and terminated the employment of all of its employees; ceased operations and failed to pay its employees the cash value of their sick time and vacation time as called for in the collective-bargaining agreement; and failed to furnish the Union the following information for each unit employee: full name, address, phone number, classification, date of hire, date of hire into classification, medical plan selected, whether

employee waived medical plan, whether employee selected single, single plus one or family medical coverage, and number of hours worked from May 2010 through April 2011. (ALJD p. 9, lines 46-52, p. 10, lines 1-7).¹

Counsel for the Acting General Counsel excepts only to portions of the Judge's recommended Order and Notice, specifically: (1) the Judge's failure to order Respondent to reinstate Ronald Arterburn absent conditioning this order on Respondent resuming operations; (2) to the requirement that Respondent notify Ronald Arterburn that the suspension and termination will not be used against him; (3) to the requirement that the Notice be posted at Respondent's facility rather than requiring that the Notice be mailed to employees; (4) to the failure to order Respondent to provide the Union with the information requested on May 19, 2011; and (5) the failure to order Respondent to bargain with the Union over the effects of the closure of the business and to put into writing any agreement reached.

II. FACTS AND ANALYSIS

The Judge made all of the correct findings of facts and conclusions of law. Furthermore, the Remedy Section accurately sets forth the violations, and how Respondent will be ordered to comply with the findings. However, the affirmative actions in the recommended Order and the "We Will" language in the Notice do not order the appropriate remedy for all of the violations found by the Judge.

First, the Judge correctly found that Ronald Arterburn was laid off. (ALJD p. 9, lines 50-51). However, due to the closure of Respondent's business, Respondent cannot comply with the ordered reinstatement remedy. Thus, the Notice language should be revised to reflect the

¹ References to the Administrative Law Judge's decision in this case are noted as "ALJD" followed by page number "p." and the line(s) being referenced "l."

traditional and appropriate remedy in these circumstances, which is to require Arterburn's reinstatement if and when Respondent resumes operations. In addition, the Judge erroneously ordered Respondent to notify Arterburn that his suspension and termination would not be used against him. (ALJD p. 11, lines 40-41). Because Arterburn was laid off, not suspended and terminated, the order should be limited to requiring Respondent to notify him that his layoff will not be used against him. *Tri-Tech Services, Inc.*, 340 NLRB 894, 897 (2003). The Notice should have this same language.

Because Respondent's business has closed, the Notice cannot be posted at its facility (ALJD p. 12, line 33). Where an employer has gone out of business or closed the facility involved in the proceeding, the traditional Board remedy is that the Notice is mailed to employees. See, for example, *Park Avenue Investment Advisor, LLC*, 358 NLRB No. 30 at p. 7 (April 17, 2012). Thus, Counsel for the Acting General Counsel requests that the Board order this remedy.

The Judge correctly determined that Respondent violated Sections 8(a)(1) and (5) of the National Labor Relations Act by ceasing operations and terminating the employment of all of its employees without notifying or bargaining with the Union. (ALJD p. 9, line 51-52). In a failure to bargain over the effects of ceasing operations case, the traditional Board remedy is that an employer is affirmatively ordered to bargain with the union and reduce to writing any agreement reached as a result of such bargaining. *Dodge of Naperville, Inc.*, 357 NLRB No. 183 (January 3, 2012). Accordingly, Respondent should be ordered to bargain with the Union and to put into writing any agreement reached, and the Notice should also reflect this requirement.

The Judge determined that Respondent violated Sections 8(a)(1) and (5) by failing to furnish the Union with relevant information (ALJD p. 10, lines 3-7). In a failure to provide

information case, the appropriate remedy includes requiring the employer to produce the requested relevant information. *Gruma Corporation d/b/a Mission Foods*, 350 NLRB 336 (2007); *Champion Home Builders*, 350 NLRB 788 (2007). Thus, Respondent should be ordered to produce the information to the Union, and the Notice should reflect this order.

III. CONCLUSION

For the reasons discussed, Counsel for the Acting General Counsel respectfully requests that the Board sustain the Acting General Counsel's Limited Exceptions to the Administrative Law Judge's Decision and modify the Order and Notice accordingly.

DATED AT San Francisco, California, this 21st day of May, 2012.

Respectfully submitted,

/s/ Cecily Vix

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ACTING GENERAL COUNSEL'S LIMITED EXCEPTIONS TO
THE ADMINISTRATIVE LAW JUDGE'S DECISION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Counsel for the Acting General Counsel of the National Labor Relations Board files the following exceptions to the Decision of Administrative Law Judge John J. McCarrick, herein called the Judge, such decision having issued on April 23, 2012.

<u>No.</u>	<u>Page</u>	<u>Lines</u>	<u>Exception</u>
1.	11	35-37	To the Judge's order that Respondent reinstate Ronald Arterburn absent conditioning this order on Respondent resuming operations.
2	11	40-41	To the Judge's order that requires Respondent to notify Ronald Arterburn that the suspension and termination will not be used against him.
3.	12	33	To the Judge's order that the Notice be posted at Respondent's facility.
4.	11-13		To the Judge's failure to order Respondent to provide the Union with the information requested on May 19, 2011.
5.	11-13		To the Judge's failure to order Respondent to bargain with the Union over the effects of the closure of the business and to put into writing any agreement reached.
6.	Notice		To the Judge's failure to add that the offer of reinstatement to Ron Arterburn is conditioned upon resuming operations; to the requirement that Respondent

notify Ronald Arterburn that the suspension and termination will not be used against him; to the failure to require that Respondent provide the Union with the information requested on May 19, 2011; to the failure to require that Respondent bargain with the Union over the effects of the closure of the business and put into writing any agreement reached.

DATED AT San Francisco, California, this 21st day of May, 2012.

Respectfully submitted,

/s/ Cecily Vix

Cecily A. Vix

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DATE OF MAILING May 21, 2012

AFFIDAVIT OF SERVICE OF

COUNSEL FOR THE ACTING GENERAL COUNSEL'S
BRIEF IN SUPPORT OF LIMITED EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION
and
ACTING GENERAL COUNSEL'S LIMITED EXCEPTIONS TO
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I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by electronic mail upon the following persons, addressed to them at the following addresses:

Richard Nelson, Jr.
RSN & Associates, Inc.
6850 Airport Blvd., Ste 11
Sacramento, CA 95837
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Christian Rak, President
Aamir Deen
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Chrisrak2850@hotmail.com

Subscribed and sworn to before me on

May 21, 2012

DESIGNATED AGENT

Susie Louie

NATIONAL LABOR RELATIONS BOARD